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26 January 1956

MEMORANDUM FOR: Chief, Regulations Control Staff

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SUBJECT : Proposed [] : "Travel, Per Diem Allowances"

REFERENCE : Your Memorandum, Same Subject, Dated 3 November 1955

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1. Your memorandum requested the comment and concurrence of this Office on the Proposed [] "Travel, Per Diem Allowances".

2. Prior to discussing the substance of the proposed regulation, we should like to raise a policy consideration. We observe that the proposed regulation contains whole sections of the Standardized Government Travel Regulations which have been inserted in the regulation either verbatim or with minor editorial changes made, we are told, in the interest of clarity. We are informed that this represents an attempt to pull all regulations from all sources which deal with per diem into a single Agency regulation to the end of reducing the number of sources which administrators need consult in dealing with per diem matters. This purpose is a commendable one insofar as it seeks to reduce the work load in the administrative echelon. However, we suggest that there are considerations of larger import. First, it would seem unnecessary for the Agency to take upon itself the not inconsiderable task of reissuing per diem regulations which already have been issued by other departments of the Government for compliance by this Agency, where appropriate, among other members of the federal community. Second, and related to the first consideration, is the one that, by undertaking such an issuance, the Agency assumes the burden of the continuing maintenance of the texts of such regulations, which again already is accomplished by those departments originally issuing them. Third, such regulations are already in force and effect. This Agency neither adds to, or detracts from, their efficacy by re-issuing them. Fourth, as a technical legal matter, the act by the Director, or the ID/8, of promulgating regulations which already have been promulgated by other Government agencies for compliance, where appropriate, by this Agency, is a meaningless one. Fifth, we deem it somewhat hazardous to undertake the editorializing of already extant regulations for whatever purpose lest, in the process, substantive changes be made unwittingly.

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Sixth, the variety of personnel within this Agency, in terms either of their places of assignment or their (military or civilian) status, renders reference to a variety of sources of authority in the administration of per diem more or less a condition of employment as regards administrative personnel, and one which we think cannot be elighted in the name of convenience. Seventh, as proposed, the regulation does not actually pull all per diem regulations into a single Agency regulation in that, in paragraphs 3-a(1) and 3-b(1), additional outside sources are referred to as being authoritative. It is our feeling that an Agency regulation on per diem, issued by the authority of the Director, should provide guidance only for those situations for which guidance is not provided by other extant regulations on the subject. In the name of convenience, these other extant sources could be reproduced verbatim and bound in the same book or books with such an Agency regulation. This would render the maintenance of the Agency regulation only an editorial task and the maintenance of other regulations only a reproductive one, instead of rendering the maintenance of all the regulations a continuing editorial task.

3. We turn now to detailed commentary of the proposed regulation.

a. Recission:

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The first recission purports to rescind certain subparagraphs of paragraph C of [redacted]. The same subparagraphs already have been rescinded by Tentative [redacted] dated 22 August 1955, and a recission by this regulation is unnecessary. The appropriate provisions of the Tentative Regulation, not those of [redacted], should be rescinded, if such is intended by this regulation.

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b. Paragraph 2-b:

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The phrase "authorizing officials", appearing in the first line, either should be defined in this regulation or it should be made clear that they are such as defined in (proposed) Agency [redacted]

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c. Paragraph 3-a(1):

This should be rewritten so as to make it clear that employees returning to the United States from overseas are entitled to appropriate per diem allowances incident to their travel. As presently written, this thought is expressed by inference, if at all.

d. Paragraph 3-b(1):

So much of this paragraph as deals with the transportation of household goods and personal effects should be deleted in deference to the subject matter of this regulation, per diem.

e. Paragraph 3-b(2):

Under certain circumstances, this paragraph seems to authorize the deduction from the basic allowance for quarters of enlisted personnel assigned to the Agency the amount of the per diem paid them for temporary duty at other than their permanent duty station. We are unable to find authority for an administrative offset of this nature. The phrase "training or other official purposes", appearing in the fourth line, should be deleted as being unnecessary. Someone assigned to temporary duty is considered to be so assigned for an official purpose. It would seem to make no difference whether the official purpose was that of training or something else. Likewise the word "domicile", appearing in the fifth line should be deleted. Domicile is a difficult concept in the law. Its inclusion in this regulation is unnecessary to the sense of the regulation and poses a consideration which can give trouble in application.

f. Paragraph 4-a:

The word "domicile" should be deleted in this paragraph wherever it appears in line with the thinking set out immediately above.

g. Paragraph 4-b(2):

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In line with the discussion between the undersigned and various other interested parties at a meeting in [] office on Tuesday, December 6, this subparagraph, from and including the second sentence on to the end, should be changed to read as follows:

"Travelers in areas where Government operated messing and billeting facilities usually are available for use by travelers of this Agency shall be required to use such facilities unless prior approval is granted not to use them; and they shall state in their travel vouchers either that (i) the facilities were used without cost or (ii) they were charged for meals and lodging, or (iii) the facilities were not available, or (iv) prior approval was granted not to use such facilities."

h. Paragraph 4-c(1):

This paragraph should be rewritten so as to state its provisions in an affirmative, and not a negative, fashion, i.e., it should provide that "per diem may be authorized . . . only if"

Also, the re-delegation provision, should be rewritten so as to make it clear that one senior subordinate official per each Deputy Director may be delegated the authority therein described. Again pursuant to the discussion at the meeting cited above, the following should be added following the word "official", appearing in the fifth line:

"The Director of Training may approve per diem in excess of 180 days for employees participating in approved training programs, provided the total amount of the per diem authorized for such period does not exceed the maximum amount which may be authorized for 180 days."

1. Paragraph 4-c(2):

The word "domicile" should be deleted as per the thinking previously set out on this subject.

3. Paragraph 4-c(3):

This paragraph should be rewritten so as to allow for the extension of the 180-day period of allowable per diem by the Deputy Director, or his designee, in deserving circumstances. One such circumstance that occurs to us is that of sick leave taken while on temporary duty which precludes a finishing of the temporary duty assignment within the 180-day period. Also, we are told that this provision was to be interpreted so as to allow for the extension of the period in deserving circumstances even though no overt mention of such extension was made.

4. Paragraph 4-d:

At the meeting it was proposed by representatives of the Comptroller's Office that subparagraphs 4-d(1) and (2) be deleted and that there be substituted therefore a new paragraph 4-d entitled and reading as follows:

d. Temporary Duty at Agency Operated Training Sites

"Whenever employees are assigned to temporary duty at Agency operated training sites where meals and lodging will be provided without cost, no per diem shall be allowed while at the site. A per diem allowance may be authorized for travel to and from the site when the length of time involved in travel and the subsistence expenses incidental thereto are fully justified."

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We believe that the last sentence of this paragraph would more clearly convey its thought were it to be rewritten so as to read:

"A per diem allowance may be authorized for travel to and from such a site in an amount deemed justified by the length of travel time and the subsistence expenses involved."

We note that, by deleting any mention of the substance of subparagraph 4-d(2), the contingency of the per diem allowance appropriate to students at an Agency-operated training site where meals and lodging are not furnished is not provided against. We have no legal objection to this omission, but merely mention it as a policy consideration for the writers of the regulation.

1. Paragraph 4-e:

At the meeting, it was proposed by representatives of the Comptroller's Office that this paragraph be redesignated paragraph 4-f, and subsequent paragraphs redesignated accordingly, and that a new paragraph 4-e be inserted in the regulation reading as follows:

"e. Temporary Duty at Non-Agency Operated Training Sites

- (1) Whenever employees are assigned to temporary duty at a non-Agency operated training site and it is known meals and lodging will be furnished without cost while at the site, per diem may be authorized not in excess of the maximum rate, less one-fifth for each meal and lodging furnished, or at such other rate consistent with prevailing circumstances. In such instances travel orders shall stipulate the rate of per diem applicable for the period enroute to and from the site and the rate of per diem while at the site.
- (2) Employees assigned to training sites, who are required to pay for meals and lodging, shall be authorized a per diem allowance not in excess of the maximum consistent with the costs to be incurred.
- (3) A newly appointed employee who has agreed in writing to accept an overseas assignment shall be required to refund any per diem paid him while on temporary duty in the United States for initial training when he

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fails either (a) to complete training or (b) to proceed to an overseas post, unless the failure is for one of the following reasons:

- (a) The original intent of the Agency is changed and the employee is assigned to a position within the continental United States.
- (b) The employee resigns or is terminated under circumstances considered by the Director of Personnel to be in the best interests of the Agency.
- (c) The employee refuses to accept an assignment different from that specified in the written agreement.

Whenever any of the situations described above occur, the authorizing official concerned shall immediately amend the employee's travel order to stop per diem.

As a matter of form, we suggest that subparagraph (3) of this paragraph perhaps better would be placed under some other heading or given separate treatment. Its subject matter does not seem to relate to "Temporary Duty at Non-Agency Operated Training Sites". As a matter of substance, we would suggest that the regulation does not provide that per diem will be stopped in the event an employee refuses to accept an assignment other than the one specified in a written agreement. This would not seem to constitute sufficient or equitable reason for stopping per diem.

ii. Paragraph 4-e(1):

The phrase "in lieu of subsistence", appearing in the eleventh line, should be deleted as being unnecessary.

iii. Paragraph 4-e(2):

The change described immediately above should be accomplished in the third line of this subparagraph for the same reason.

iv. Paragraph 4-f:

The phrase "for such periods as are necessary", appearing in the first line, should be deleted as unnecessary.

v. Paragraph 5-e:

The word "until" should be inserted following the word "or", appearing in the first line (page 11), as it is not the

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intent of this sentence to declare that per diem will run from an arrival at a terminal. Also, the second sentence of this subparagraph should be deleted as being unnecessary.

c. Paragraph 5-f:

So much of this sentence as begins with "as occasioned by", appearing in the first line, and ending with "rail to air", appearing in the third line, should be deleted as being unnecessary.

r. Paragraph 5-h:

This subparagraph should be shortened to read as follows:

"When travel crosses the International Date Line, per diem will be computed on the basis of the total elapsed travel time."

a. Paragraph 5-i:

In line with the discussion at the meeting, this subparagraph should be revised to read as follows:

"When revisions of maximum per diem rates for travel outside the continental limits of the United States are made effective during periods of travel and the revised rates are not stated in the travel voucher, any downward revision of per diem rates shall be adjusted at the time of administrative audit. In cases of increased per diem rates, the travel voucher shall be returned by the Travel Audit Section to the submitting component to ascertain if appropriate revision or supplement claim should be made to allow the additional per diem."

4. On the basis of the commentary set out in paragraph 3 above, this Office does not concur in the regulation as proposed.

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Office of General Counsel

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